



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200826039

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR - 2 2008

UIL Code: 408.01-00

T:EP:RA:T3

LEGEND:

Decedent =

Spouse =

Trust T =

Subtrust U =

Subtrust V =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Plan X =

Plan Y =

Company W =

Company X =

State S =

County T =

Dear

This is in response to the _____, 2005 letter submitted on your behalf by your authorized representative, and supplemented by correspondence dated _____, 2006, _____, 2006, _____, 2007, _____, 2007, _____, 2007, and _____, 2008, requesting rulings under section 402 of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

Decedent, whose date of birth was Date 1, 1958 died on Date 2, 2005, at the age of 46, a resident of County T, State S. State S is a community property state.

Decedent had not attained age 70 ½ as of his date of death, and would not have attained age 70 1/2 as of the date of this ruling request. Decedent was survived by his spouse, Spouse. At his death, Decedent was a participant in Plans X and Y maintained by Company W and administered by Company X, and, at his death, Decedent had account balances in both plans.

It has been represented that Decedent's interests in Plans X and Plan Y are subject to State S community property law.

On Date 4, 2005, Decedent executed beneficiary designation(s) with respect to his interest(s) in Plans X and Y in which he named the trust, Trust T, created under the terms of his Last Will and Testament as the beneficiary of his interest(s) in said Plans. Spouse consented to said designation(s).

Decedent's Last Will and Testament was executed by Decedent on Date 3, 2004. Article III of Decedent's Last Will and Testament provides for the creation of Subtrust U if Spouse survives Decedent. Article IV of Decedent's Last Will and Testament provides for the creation of Subtrust V if Spouse survives Decedent.

Article 7.1 of Decedent's Last Will and Testament names Spouse as the executor of his estate. Article 7.2 of Decedent's Last Will and Testament names Spouse as the trustee of all trusts created under the provisions of said Will.

Section 8.5 of Decedent's Last Will and Testament provides, in relevant part, guidance to the trustee of Trust T with respect to any interests that Decedent may have had in retirement plans or employee benefit plans at his death.

SubSection 8.5(a) of Decedent's Last Will and Testament provides that if Spouse survives Decedent, and if Spouse has an ownership interest in an employee benefit or retirement plan, said interest shall be paid to Spouse to the extent of her ownership interest but only to the extent that said interest is not paid to her under his (Decedent's) beneficiary designation.

With respect to other employee benefit and retirement plan proceeds, SubSection 8.5(c) of Decedent's Last Will and Testament provides that if no specific testamentary trust is named as the beneficiary of Decedent's interest in a retirement or benefit plan (or plans), said interest(s) is to be allocated to Subtrust V to the extent necessary to increase Decedent's taxable estate to the largest amount necessary to insure that Decedent's estate pays no Federal estate tax.

Section 4.1 of Decedent's Last Will and Testament provides that Spouse is to be the primary beneficiary of Subtrust V. Section 4.2 of Decedent's Last Will and Testament provides that the trustee thereof is to distribute to Spouse from the income and principal of Subtrust V such amounts as are necessary, when added to amounts obtained from other sources known to trustee, to provide for her health, support and maintenance, to the extent reasonably possible in accordance with her standard of living at the time of Decedent's death. Section 4.4 of Decedent's Last Will and Testament provides, in summary, that upon the death of Spouse, the then remaining balance of the Subtrust V estate shall be added by the Trustee to the Children's Trusts created under Article V of the Will.

As executrix of Decedent's estate, Spouse intends to direct the administrator of Plans X and Y to transfer, by means of direct rollovers, $\frac{1}{2}$ of Decedent's interest(s) in Plans X and Y into an individual retirement account ("IRA") set up and maintained in the name of Spouse. Said direction will be made in accordance with the provisions of SubSection 8.5(a) of Decedent's Last Will and Testament. Said actions will occur during calendar year 2008.

With respect to the remainder of Decedent's interests in Plans X and Y, Spouse as executrix of Decedent's estate, and as trustee of the trusts created under the terms of Decedent's Last Will and Testament, has determined that said interests should be allocated to Subtrust V. Spouse intends to so allocate.

Based on the above facts and representations, the following rulings are requested:

1. That the distribution(s) by the administrator of Plans X and Y directly into an IRA set up and maintained in the name of Spouse of $\frac{1}{2}$ of Decedent's interests in said Plans, which $\frac{1}{2}$ represents Spouse's ownership interest therein, will qualify as "eligible rollover distributions";
2. that the administrator of Plans X and Y may transfer, by means of direct rollovers, the $\frac{1}{2}$ of Decedent's interests in said Plans referenced in the first ruling request into an IRA set up and maintained in Spouse's name. Furthermore, if the administrator of said Plans X and Y does so, no portion of the amount(s) directly rolled into the IRA will be included in the gross income of either Trust T or Spouse in the year in which directly rolled over; and
3. that an IRA described in Code section 408(a) set up and maintained in the name of Spouse is an "eligible retirement plan", as defined in Code section 401(a)(31)(E), and, as such, is eligible to receive as rollover contributions the amounts distributed

from Plans X and Y referenced in your first two ruling requests.

With respect to your ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

Section 402(c)(8)(B) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(3)(A) of the Code provides, generally, that, except as provided in subparagraph (B), section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 1.402(c)-2 of the regulations, Q&A 7(b) provides that any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and thus is an eligible rollover distribution if it otherwise qualifies.

Section 401(a)(31)(A) of the Code provides that, in general, a trust will not constitute a qualified trust under this section unless the plan, of which such trust is a part, provides that if the distributee of any eligible rollover distribution: (i) elects to have such distribution paid directly to an eligible retirement plan, and (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee to trustee transfer to the eligible retirement plan.

Section 401(a)(31)(C) of the Code provides, in relevant part, that subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) determined without regard to sections 402(c), 403(a)(4), 403(b)(8) and 457(e)(16) of the Code. The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 401(a)(31)(E) of the Code provides that, for purposes of this paragraph, the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

Section 1.401(a)(31)-1 of the regulations, Q&A-15, provides that a direct rollover described in Code section 401(a)(31) is to be treated as a distribution and rollover of an eligible rollover distribution.

Section 402(g)(6) of the Code provides this subsection shall be applied without regard to community property laws.

Section 408(d)(3)(C)(ii) defines "inherited IRA" as an IRA maintained for the benefit of

an individual who acquired said IRA by reason of the death of another individual, in the case where said acquiring individual is not the surviving spouse of the deceased.

Code section 401(a)(9), in general, sets down the rules governing minimum required distributions from retirement plans qualified within the meaning of Code section 401(a).

Section 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the IRA trust is maintained.

Code section 401(a)(9)(B)(ii) provides that, with respect to an employee/ plan participant who dies prior to his "required beginning date", as that term is defined in Code section 401(a)(9)(C), distributions of that employee's entire interest under a plan must be made within 5 years of the employee's death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5-year rule (above) with respect to distributions made to (or for the benefit of) a designated beneficiary as long as said distributions begin not later than 1 year after the death of the employee and as long as said distributions are made over the life of the beneficiary (or over a period not extending beyond the life expectancy of such beneficiary).

Section 401(a)(9)(E) of the Code provides that the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

With respect to your three ruling requests the Service notes that said requests raise two issues. Initially, the requests require the Service to address the issue of whether Spouse's community property ownership interests (1/2) in Decedent's interests in Plans X and Y may be rolled over into an IRA set up and maintained in her name. In this regard, the Service notes that said interests are payable to Spouse not because of the operation of State S community property law but because provisions of Decedent's Last Will and Testament specifically provided for said payment. As a result, we conclude that said interests may be considered eligible for rollover treatment.

The second issue raised is whether said interests may be rolled into an IRA set up and maintained in the name of Spouse although the interests initially are subject to the provisions of Decedent's Last Will and Testament and to the provisions of Trust T created thereunder. In this regard, generally, if either a decedent's qualified retirement plan accounts or IRA amounts pass through a third party such as an estate, the surviving spouse will be treated as acquiring them from the third party and not from the decedent, and would not be eligible to roll over the distributions into an individual retirement account (IRA) set up and maintained in the surviving spouse's name. However, there are exceptions to the general rule.

With respect to this case, we note that Decedent's Last Will and Testament require the trustee of Trust T, Spouse, to pay Spouse her ownership portion(s) of Decedent's interests in Plans X and Y. Thus, said portions must be paid to Spouse and are not subject to the control or discretion of any party other than Spouse.

Thus, in this case, Spouse's ownership interests in Decedent's interests in Plans X and Y are not subject to the general rule, above, but instead will be treated as if they passed directly to Spouse from Decedent. As a result, they may be rolled over, or directly transferred by means of a transaction described in Code section 401(a)(31), into an IRA set up and maintained in the name of Spouse.

Therefore, with respect to your first three ruling requests, we conclude as follows:

1. That the distribution(s) by the administrator of Plans X and Y directly into an IRA set up and maintained in the name of Spouse of $\frac{1}{2}$ of Decedent's interests in said Plans, which $\frac{1}{2}$ represents Spouse's ownership interests therein, will qualify as "eligible rollover distributions";
2. that the administrator of Plans X and Y may transfer, by means of direct rollovers, the $\frac{1}{2}$ of Decedent's interests in said Plans referenced in the first ruling request into an IRA set up and maintained in Spouse's name. Furthermore, if the administrator of said Plans X and Y does so, no portion of the amount(s) directly rolled into the IRA will be included in the gross income of either Trust T or Spouse in the year in which directly rolled over; and
3. that an IRA described in Code section 408(a) set up and maintained in the name of Spouse is an "eligible retirement plan", as defined in Code section 401(a)(31)(E), and, as such, is eligible to receive as rollover contributions the amounts distributed from Plans X and Y referenced in your first two ruling requests.

This ruling letter is based on the assumption that Plans X and Y either were, are, or will be qualified within the meaning of Code section 401(a), and their associated trusts tax-exempt within the meaning of Code section 501(a) at all times relevant thereto. It also assumes that the IRA to be set up and maintained in the name of Spouse will meet the requirements of Code section 408(a) as represented, and that Decedent's pre-existing IRA also complies with Code section 408(a) at all times relevant thereto. Additionally, it assumes the correctness of all facts and representations made with respect thereto.

Please be advised that this letter ruling does not permit the rollover or transfer of amount(s), if any, required to be distributed under Code section 401(a)(9). In this regard, we note that there has been no representation that a required distribution had been made with respect to either calendar year 2006 or calendar year 2007. Any required distribution for either calendar year, if not already made, must be made prior to the completion of the transaction(s) described above.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you have any questions concerning this letter ruling, please contact
, Esquire (I.D. -) at 202-283- (Phone) or 202-283-9598 (FAX).

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Form 437